IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32 (2) (b)
Description of Case.

A.O. No: 401 of 2003

Jagat Singh
Vs.
The New India Assurance Co. Ltd. And others.

WITH

A.O. No: 402 of 2003

Jagat Singh
Vs.
The New India Assurance Co. Ltd. And another.

Date of decision: 23.12.2004.

For the approval of:

Hon'ble Mr. Justice Irshad Hussain,J.

Hon'ble Mr. Justice B.S. Verma, J.

- Whether the order/judgment should be (-)
  Sent for reporters for reporting?

- Whether the reporters be allowed to (Yes)
  See the judgment?

Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 401 of 2003

Jagat Singh, S/O Sri Shankar Singh,
R/O New Market, Kotdwar,
District Pauri Garhwal. … **Appellant.**

Versus

1. The New India Assurance Company Ltd.
   Through Branch Manager, Nazibabad Road Branch,
   Ambey Complex, Kotdwar,
   District Pauri Garhwal.
2. Sri Gulab Singh, S/O Sri Sohan Singh,
3. Smt. Chandrakala Devi, W/O Sri Gulab Singh,
   Both R/O Badrinath Marg Kotdwar,
   District Pauri Garhwal.

… **Respondents.**

With

Appeal from Order No. 402 of 2003

Jagat Singh, S/O Sri Shankar Singh,
R/O New Market, Kotdwar,
District Pauri Garhwal. … **Appellant.**

Versus

1. The New India Assurance Company Ltd.
   Through Branch Manager, Nazibabad Road Branch,
   Ambey Complex, Kotdwar,
   District Pauri Garhwal.
2. Smt. Shalu Devi, W/O late Sri Vinod Kumar,
   R/O village Giwai Soath, Thana Kotdwar,
   District Pauri Garhwal.

… **Respondents.**

Sri B.P.Nautiyal,Advocate,learned counsel for appellant.
Sri M.K.Agrawal & Sri B.D.Upadhyay, Adv., learned counsel for respondents.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble B.S. Verma, J.

Date December 23, 2004.

(Per Hon'ble B.S. Verma, J.)

Both these appeals, under Section 30 of the Workmen's Compensation Act, arise out of the same motor accident and since common questions are involved for determination therein, these are being disposed of by this common judgment.

Initially, the appellants preferred Writ Petitions on 20-11-2002 against the judgment and award dated 19-9-2002 passed by Workmen Compensation Commissioner, Pauri Garhwal, (for short the Commissioner) in W.C.A. Case No. 1 of 2001 , Gulab Singh & another Vs. Jagat Singh & another, and W.C.A. Case No. 2 of 2001, Smt. Shalu Devi Vs. Jagat Singh & another, whereby the learned Commissioner awarded compensation in favour of the claimants as against the owner of the vehicle. Aggrieved, the owner of the vehicle has come up before this Court, Subsequently, vide order of this Court dated 01-12-2003, Writ Petitions were converted into appeals and were registered as such.

Relevant facts were that Bhanu Pratap, son of Gulab Singh and Smt. Chandrakala Devi, and Vinod Kumar, husband of Smt. Shalu Devi, were employed as conductor and driver respectively under the employment of the appellant in passenger bus No. U.P. 06-3845. Both of them died in a motor vehicle accident on 2-7-2001 in the course of their employment. According to the claimants, on the fate-ful day deceased Vinod Kumar was driving the bus, which fell down from the Siddhabali bridge on Kotdwar-Kalagarh road. Both the driver and conductor sustained grievous injuries and died. It was alleged that the bus was duly insured with New India Assurance Company. Claimants sent notices to the owner for payment of compensation, but nothing was done. Hence, claimants Gulab Singh and his wife Chandra Kala Devi and Smt. Shalu Devi filed claim petitions before the learned Commissioner.

Owner of the vehicle filed written statement. He admitted that the deceased Bhanu Pratap and Vinod Kumar were

employed as conductor and driver of the ill-fated bus, who died in the course of their employment in the motor vehicle accident. It was pleaded that the bus was duly insured with the New India Assurance Company, therefore, the liability to pay compensation lay upon the Insurance Company.

The Insurance Company in its written statement admitted insurance of the vehicle/bus on the date of accident but asserted that the Insurance Company was not liable for compensation because the driver was not having valid driving licence in violation of policy conditions. It was alleged that the compensation claimed was excessive and that the age and income were wrongly shown.

The learned Commissioner framed as many as seven issues in the case. The Commissioner held that the deceased were employed in bus No. UP 06-3845: that the driver of the bus was not holding a valid driving licence on the date of accident as the driving licence was valid upto 3-6-2001 and that the vehicle was duly insured with unlimited liability. Ultimately, the Commissioner held claimants Gulab Singh and Chandrakala Devi entitled to compensation of Rs. 2,70,631/- and claimant Smt. Shalu Devi to compensation of Rs. 2,99,384/- and ordered the owner of the bus to pay the compensation within a period of one month failing which interest @ 4% per annum was levied.

The only point for determination in these appeals is whether the driver of the bus was holding a valid and effective driving licence on the date of accident? It is not disputed that the accident occurred on 2-7-2001. It is also not disputed that the driving licence of the driver of the ill-fated bus, namely, Vinod Kumar, was valid for the period 4-6-1998 to 3-6-2001. The period of thirty days was to expire on 3-7-2001.

Proviso appended to Section 14 (2) (b) (ii) of the Motor Vehicles Act lays down that every driving licence shall,

notwithstanding its expiry under this sub-section, continue to be effective for a period of thirty days from such expiry. In any view of the matter, it cannot be said that the driving licence of the driver was not effective on the date of accident, i.e. 2-7-2001. It is evident that the accident occurred within a period of thirty days from the expiry of the validity of driving licence. It is well settled law that the licence remains valid for a period of thirty days from the date of its expiry as has been held by the Apex Court in paragraph 45 in the case of ***"National Insurance Company Limited Vs. Swaran Singh and others" [2004(3), Supreme Court Cases, 297],*** which is reproduced hereunder:-

45. Thus, a person whose licence is ordinarily renewed in terms of the Motor Vehicles Act and the rules framed thereunder despite the fact that during the interregnum period, namely, when the accident took place and the date of expiry of the licence, he did not have a valid licence, he could during the prescribed period apply for renewal thereof and could obtain the same automatically without undergoing any further test or without having been declared unqualified therefore. Proviso appended to Section 14 in unequivocal terms states that the licence remains valid for a period of thirty days from the day of its expiry.

This point was also dealt by this Court in the case of ***"The Oriental Insurance Company Ltd. Vs. Nafis Ahmad and others" [2004(2) U.D., 536].*** Therefore, in the instant case, it is established on record that the driver was having a valid and effective driving licence on the date of accident, i.e. 2-7-2001. The learned Commissioner has not considered the validity and effectiveness of the driving licence for a period of thirty days from the date of its expiry thereby he has wrongly fastened the liability to pay compensation on the owner of the bus.

It is admitted to the Insurance Company-respondent no.1 that the vehicle was duly insured on the date of accident, therefore, the liability to pay the compensation rests upon the Insurance Company.

For the reasons and discussion aforesaid, it is a case fit to allow the appeals.

The appeals are allowed. The judgment and award dated 19-9-2002 passed in W.C.A. Case Nos. 1 of 2001 and W.C.A. Case No. 2 of 2001 is modified and it is held that the claimants are entitled to the compensation awarded by the Workmen's Compensation Commissioner from the New India Assurance Company Ltd.- respondent no.1 instead of appellant Jagat Singh.

(B.S. Verma, J.) (Irshad Hussain, J.)

RCP